Community patent: jurisdiction on the Court of Justice in disputes

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The Council held a debate on an enhanced patent system in Europe and adopted **conclusions** on the main features of the future patent system based on two main pillars comprising:

- **the creation of a unified patent litigation system** that would have exclusive jurisdiction in respect of civil litigation related to the infringements and validity of EU and European patents, and would consist of a court of first instance (with a central division and local and regional divisions), and a court of appeal;

- **the creation of an EU patent as a unitary legal instrument for granting patents valid in the EU as a whole**. In a public session the Council also agreed on a general approach (i.e. an agreement in principle pending the opinion of the European Parliament) on a draft regulation establishing the EU patent.

Recalling that enhancing the patent system in Europe is a necessary prerequisite for boosting growth through innovation and for helping European business, in particular SMEs, face the economic crisis and international competition, the Council considers that such an enhanced patent system is a vital element of the Internal Market and that it should be based on two pillars, i.e. the creation of a European Union patent ("EU patent") and the setting up of an integrated specialised and unified jurisdiction for patent related disputes thus improving the enforcement of patents and enhancing legal certainty.

The Council conclusions concern the main features of the **European and EU Patents Court**. This should have exclusive jurisdiction in respect of civil litigation related to the infringement and validity of EU patents and European patents. The EEUPC should comprise a Court of First Instance, a Court of Appeal and a Registry. The Court of First Instance should comprise a central division as well as local and regional divisions. The European Court of Justice shall ensure the principle of primacy of EU law and its uniform interpretation.

The Council considers that these conclusions should form part of the overall final agreement on a package of measures for an Enhanced Patent System in Europe comprising the creation of a European and EU Patents Court (EEUPC), an EU patent, including the separate regulation on the translation arrangements, an Enhanced Partnership between the European Patent Office and central industrial property offices of Member States and, to the extent necessary, amendments to the European Patent Convention.

These conclusions stress that the following conclusions are without prejudice to the request for an opinion of the European Court of Justice as well as to Member States' individual written submissions and are conditional on the opinion of the European Court of Justice. It stresses that that the system here envisaged should be established with due regard to the constitutional provisions of the Member States and is without prejudice to the request for an opinion of the European Court of Justice. It states that the establishment of the EEUPC would be based on an agreement, the ratification of which by the Member States would have to take place in full compliance with their respective constitutional requirements.

The Council recognises that some Member States have fundamental legal concerns concerning the creation of the EEUPC and its envisaged overall architecture as reflected in these conclusions, which would have to be revisited in the light of the opinion of the European Court of Justice.

The European Court of Justice shall ensure the principle of primacy of EU law and its uniform interpretation.